

APPENDIX A

Factual Findings

1. New England Fiber Communications L.L.C. d/b/a Brooks Fiber Communications (Brooks) is a competitive local exchange carrier (CLEC) as defined by Maine and Federal law. See Chapter 280, §§ 2(C), (D) and (J); 47 U.S.C. §§ 153(26) and 251(H). The Commission granted Brooks the authority to provide local exchange service in the State of Maine in an Order issued in Docket No. 97-331 on July 25, 1997, and interexchange service in an Order issued on September 9, 1997 in Docket No. 97-559.

2. Brooks owns and maintains a switch in the City of Portland. Bell Atlantic and Brooks own and maintain trunking between Brooks's switch and BA's tandem switch in Portland, which switches both local and interexchange traffic.

3. Brooks's terms and conditions on file with the Commission define its service area as follows: "Where facilities are available, the Company's service area consists of the local exchange as described in Attachment A." Attachment A is a map that depicts the areas included within the municipal boundaries of Portland, South Portland and Westbrook. This Notice will refer to that exchange as "Brooks Portland area exchange" or the "Brooks exchange."¹

4. Brooks has applied for and has obtained 55 CO codes (NXXs) from the North American Numbering Plan Administrator (NANPA). At the time it obtained the codes the NANPA was Bell Atlantic; Lockheed Martin took over this function in late October of 1998. The 55 codes are assigned to various geographic locations throughout the State. Only 3 of the CO codes are assigned to locations within the Brooks Portland area

¹The Brooks exchange lies entirely within Bell Atlantic's Portland calling area (areas/exchanges that are included in the BSCAs of BA-ME's Portland, South Portland and Westbrook exchanges), as defined by the Bell Atlantic's terms and conditions, Part A, § 6. Bell Atlantic's Portland exchange includes the municipalities of Portland and South Portland, as well as Falmouth and Cape Elizabeth. Its BSCA consists of the exchange itself plus Cumberland, Freeport, Gorham, Pownal, Scarborough, Westbrook, Windham, Yarmouth, Gray and West Gray. The Westbrook exchange includes the City of Westbrook. Its BSCA includes Portland, Gorham, Windham and Scarborough.

exchange. Those three codes are Portland 228, South Portland 239 and Westbrook 464.

5. Brooks designated and the NANPA assigned the other 52 CO codes to locations outside the Brooks exchange and outside the Portland calling area as defined by the ILECs' terms and conditions. This Notice will refer to these 52 codes as the "non-Portland CO codes."

6. Brooks does not own, lease or maintain any facilities (switches or loops) in any of the locations at which the 52 non-Portland area CO codes are assigned.² A potential subscriber located in one of the non-Portland CO code locations is not able to obtain a loop, local switching or local dial tone from Brooks at that location. For Brooks to offer loops, local switching and local dial tone in one of the non-Portland CO code areas (for example, in Augusta), using its Portland switch for switching, Brooks would need to obtain a dedicated facility (a loop and an interoffice facility) from the customer's premises in Augusta to Brooks's switch in Portland. Alternatively, it could place a switch in Augusta and build (or buy) a loop from that switch to the customer in Augusta.

7. Brooks does not provide loops, local switching and local dial tone in any of the non-Portland locations, or purchase local exchange service for resale from another local exchange carrier, or provide any other method for a call to be terminated in those locations. Therefore, a person placing a call to one of those codes cannot be connected to a Brooks customer that has a customer premises³ in the location to which the code is assigned. Instead, the call will be routed to (or terminate at) a Brooks customer that is located in the Brooks Portland area exchange, and that is connected by a loop or other transport facility provided by Brooks (or by the customer) to Brooks's Portland switch. Thus, if a person calls a number in Brooks's 835 code (assigned to Augusta), the person will be connected to a Brooks customer located in Brooks's Portland area exchange, and not to a Brooks customer located in Augusta.

²Brooks also does not purchase local service for resale purposes from BA so that it would be able to provide local service to any of those locations. If a CLEC did provide local service through resale, it would not acquire its own CO code.

³A customer premises is a place, normally a building, at which an access line may terminate.

If, for example, a BA customer in Augusta calls a number with an 835 CO code (the Brooks code that is assigned to Augusta), the call will be routed as follows:

- ♦ from the BA customer's premises in Augusta over the BA loop facilities assigned to that customer to the local BA Augusta switch;
- ♦ then over BA's trunking (transport) facilities dedicated to Brooks's traffic directly to Brooks's switch in Portland or, in the case of overflow traffic, over BA non-dedicated trunking facilities to BA's tandem in Portland, and then over the trunks owned by Brooks that run from BA's tandem to Brooks's switch;
- ♦ then to a Brooks's customer having premises in the Brooks's Portland area exchange over a Brooks loop or other transport facility assigned to that customer.

8. If, for example, a caller in Hampden (served by an independent telephone company (ITC)) places a call to an 849 number (the Brooks code assigned to Bangor), the call is routed over trunks owned and maintained by the ITC from Hampden to the meet point between the ITC and BA, then over BA trunks to Brooks's switch in Portland, (or, for overflow traffic, to the BA tandem in Portland, then to Brooks's switch), then to a Brooks customer in its Portland area exchange. It is not necessary for the call to be routed to or through Bangor on the way to Portland, although Hampden Telephone Company's and BA-ME's trunking could be configured to route it, unswitched, through Bangor. The call will be switched at the Hampden switch of Hampden Telephone Company, but it will not be switched at BA-ME's Bangor switch.

9. Under both of the scenarios described in Paragraphs 7 and 8 above, the call cannot be routed from Brooks's switch to a Brooks customer either in Augusta or in Bangor; there are no loop facilities from Brooks's switch in Portland or facilities that are configured in such a way as to act as loops to carry the call to a Brooks customer who is located in Augusta or Bangor.

10. None of the incumbent local exchange carriers (ILEC) exchanges that are located in the places to which the 52 Brooks non-Portland CO codes have been assigned include the Brooks Portland area exchange within their basic service calling areas (BSCAs), as established in their terms and conditions pursuant to the BSCA rule, Ch. 204.

11. Some of Brooks's customers are Internet service providers (ISPs). At least one customer provides voice-mail services. Those companies desire to route traffic from throughout the state to a single location or facility, such as an Internet server. Brooks has assigned 7-digit telephone numbers from the non-Portland CO codes to many of those companies. Brooks and/or these companies have caused these numbers to be published, and Brooks and/or its customers have represented to their own customers that charges for the calls will be based on the location to which the CO code was designated by Brooks. For example, CO code 835 is assigned to Augusta, and customers of ISPs have been told that a call to an 835 CO code would be considered as a call to Augusta. In addition, some recent Bell Atlantic telephone directories (e.g., Portland Area, published in August 1998) have listed the 55 CO codes assigned to Brooks as located in the places (e.g., 835-Augusta) at which Brooks designated them. Thus, a Bell Atlantic customer in the Augusta exchange (or within the Augusta BSCA) who dials an 835 number (e.g., in order to connect to an ISP located in Portland), would reasonably expect that the call would be a non-toll call.

12. Bell Atlantic considers calls to the non-Portland CO codes to be calls to the locations specified by the Brooks assignments on file with the NANPA and rates them accordingly. Thus, Bell Atlantic rates a call to 835 (assigned to Augusta) as terminating in Augusta, even though it actually terminates at a Brooks customer who is located in the Brooks Portland Area exchange. If a Bell Atlantic customer in Augusta calls an 835 number, there is no toll charge; the call is considered local. Similarly, if a Bell Atlantic customer in Readfield (whose BSCA includes Augusta) calls an 835 number, Bell Atlantic considers the call to be local and no toll is charged. For purposes of the interconnection agreement with Brooks, Bell Atlantic also considers the call as terminating at the location assigned to the code by Brooks and the NANPA (e.g. 835 - Augusta). Thus, for a call from Augusta or Readfield to an 835 number, Bell Atlantic pays a "reciprocal compensation" to Brooks for "interconnection pursuant to section 251(c)(2)," as provided in the interconnection agreement approved by the Commission pursuant to 47 U.S.C. § 252 on August 26, 1997, in Docket No. 97-502, even though BA transports the traffic from Augusta to Portland over its trunking facilities. Under the agreement, BA-ME and Brooks pay each other "reciprocal compensation" of \$.008 per minute for "Local Traffic." "Local Traffic" is defined in the agreement as traffic in the local areas included in BA-ME's

terms and conditions, Part A, § 6, i.e., the local exchange plus exchanges that are included in that exchange's BSCA. The agreement also makes clear that the companies' respective access tariffs apply to all switched "Exchange Access" services⁴ and to intraLATA toll traffic (i.e., to interexchange traffic). The agreement defines "intraLATA traffic" as all traffic that is not local. That definition is substantively identical to the definition of "interexchange communications or traffic" contained in Chapter 280, § 2(G) of the Commission's rules.

13. The independent telephone companies have treated this traffic in different ways. The majority of ITCs have not "opened up" the Brooks CO codes that are assigned to locations within their local (BSCAs), i.e., if one of their customers attempts to make a call to one of those codes, it is not completed. For example, Augusta is included in the BSCA of Winthrop, served by Community Service Telephone Company (CST). If a CST customer in Winthrop attempts to call an 835 number (the Brooks code assigned to Augusta), CST blocks the call.

Some ITCs (the six TDS companies, Pine Tree Telephone and Telegraph Company and Mid-Maine) have "opened up" the Brooks CO codes that are assigned to places within the local calling areas of those ITCs' exchanges, and rate the calls as local. Thus, those companies are rating the traffic in the same manner as Bell Atlantic.

At present, no ITC has "opened up" Brooks codes that are assigned to locations within the ITC's local calling area (EAS or BSCA) and also rated the calls to those exchanges as toll.

All of the ITCs have opened up the Brooks CO codes that are assigned to locations that are outside the ITCs' local calling area (BSCA). A call placed to a BA or ITC code at those locations is a toll call, and the ITCs also bill the call to the Brooks CO code in those same locations as toll.

⁴The agreement defines "exchange access" as that term is used in the Telecommunications Act. 47 U.S.C. § 153(16) states:
6

7(16) EXCHANGE ACCESS.-The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

One ITC, Pine Tree Telephone and Telegraph Company, has recently informed the Commission that it considers Brooks to be an interexchange carrier and that it will charge Brooks access charges for any traffic that originates in its service territory.

14. The NANPA has projected that Maine will need another area code by the second quarter of 2000 and has requested this Commission to present a plan for a second area code by December 1, 1998. Approximately 792 CO codes are available in an area code. Of the 792 CO codes in area code 207, 518 (including the 55 Brooks CO codes) have been assigned. Within the 518 assigned codes (many to exchanges with a small number of customers), there is a large number of unused telephone numbers. Those unused numbers are not presently available for use by another LEC, however, because the telephone numbers within a CO code (NXX) cannot presently be apportioned among LECs; each LEC providing local exchange service in an area currently must have its own CO code. A solution (local number portability) that allows several LECs to share numbers in the same CO code in the same area is not likely to be available for another one or two years.